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GUEST: **Gritakumar Chitty**
Registrar
International Tribunal for the Law of the Sea

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INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

In 1982, the United Nations adopted the Convention on the Law of the Sea. Among other things, the Convention called for the establishment of the International Tribunal for the Law of the Sea, which was recently set up in Hamburg in Germany. Mr. Gritakumar Chitty, the Registrar of the Tribunal, discusses the different aspects of its mandate and how it differs from other international judicial bodies.

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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues. Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**.

Since time immemorial, the sea has been the provider of food for many communities around the world. But in recent times, competition over the bounty of the oceans has intensified and, in many instances, reached the point of conflict. For this reason and to regulate all uses of the seas, in 1982 the world community adopted the United Nations Convention on the Law of the Sea. And to peacefully settle all sea-related disputes among the States parties to the Convention, the Convention called for the creation of the International Tribunal for the Law of the Sea, which was recently established in Hamburg, Germany. Our guest today, Gritakumar Chitty, is the Registrar of the Tribunal. Joining me to talk with Mr. Chitty are James Bone of *The Times* of London and Thalif Deen of Inter Press Service.

Mr. Chitty, welcome to World Chronicle.

CHITTY: Thank you.

LITTLEJOHNS: Mr. Chitty, for those of us who are not familiar with these legal bodies, what exactly are the duties of the Registrar of the Tribunal? Is it something like the clerk of the court in criminal and civil courts?

CHITTY: Not quite, Michael, it's more like the registrar in many national court systems. The registrar is sort of the executive head of the court. And you find a distinction between the functions of the judiciary, which are the judicial — the judicial role of the court, and the function of the registry, which provides all the services for the court, including legal and administrative and other services.

LITTLEJOHNS: And you have a large staff working under you?

CHITTY: No, I don't. When the Tribunal was set up it was a start-up situation, and the very basic minimum of staff was provided. But I do expect that as the court becomes functional and starts receiving cases there would need to be some adjustment in that.

LITTLEJOHNS: Can individuals bring cases to the Tribunal, or is it limited to Governments?

CHITTY: In the case of the Tribunal, individuals can bring cases dealing with the seabed disputes, the disputes regarding the mining of the deep seabeds for manganese nodules. And in that case, private individuals or corporations or even consortia could apply to the court to deal with contractual or other matters relating to the exploitation of the seabed resources.

LITTLEJOHNS: What about fisheries and things like that?

CHITTY: In the case of fisheries, individuals do not have right of access.

LITTLEJOHNS: Not even trawler owners, or corporations?

CHITTY: No, not in that case.

LITTLEJOHNS: Why is that?

CHITTY: Because that was seen as a State responsibility, and the State — this is a public international law situation where the States accept the responsibility for their citizens. And in the case of — there's one exception where individuals would have a right, and that is where a vessel has been seized, or the crew of a vessel has been seized, for violating a provision of the Convention, and of course the State has seized the vessel or the crew —

LITTLEJOHNS: Would that be a sort of act of piracy?

CHITTY: No, not quite. It's a violation of a coastal state law, consistent with the Convention, and where the Convention says the vessel and the crew should be released. If that doesn't happen quickly enough, then access could be had to the Tribunal, and anybody authorized by the flag State could submit the case on behalf of the vessel owner or the crew.

LITTLEJOHNS: Before I defer to James Bone, do you have any cases before the Tribunal at this time?

CHITTY: No, not yet. The Tribunal is barely six months in existence, and it's formulating its rules and preparing for that stage. It has adopted provisionally the rules provided for it by the States parties to the Convention, and those rules could be used if a case is submitted now, but no, nothing has been submitted as yet.

BONE: You mentioned those manganese nodules. We're told that there's a bonanza waiting on the seabed — these manganese nodules, lumps of stone or mineral that have got all kinds of metals in them that are worth mining. Tell us a little bit about what's in a manganese nodule and who can get them and who's allowed to go and scrape them off the bottom of the ocean there.

CHITTY: Well, the manganese nodules are a pure form of mineral. They're 98 per cent pure minerals — manganese, cobalt, nickel, copper, among others — and they are in the shape of potato-sized nodules lying on the ocean floor at very great depths. And accessing them is a real problem, because at three, four, five miles down in the ocean you need a very special technology to get at it in any quantity. There has been no commercial operation as yet. The Convention foresaw the need to protect the interests of those countries and those corporations or consortia that had already done research into accessing those nodules, and the Convention protected their interests by registering pioneer investor claims. There are mine sites, many in the Pacific, which have been earmarked for the pioneer investors to harvest those resources and the licenses to be issued by the Seabed Authority, the International Seabed Authority.

BONE: As I understand the history of the Law of the Sea Convention, there was a problem because the Americans, who of course have the best technology for getting these

manganese nodules, felt that their commercial concerns weren't going to be given the right to go and mine and reap the rewards of their own research and their own endeavour, and the Convention had to be fixed at the last minute before the Americans came on board. Could you explain exactly how that happened?

CHITTY: That was a situation that transpired at the tail end of the Conference negotiations in the early '80s. And the Americans, among others, the other industrialized countries, were not content with the provisions of that part of the Convention dealing with the deep seabed. And there was a negotiation that started out in the late '80s under the aegis of the Secretary-General and the special representative of the Secretary-General to correct that flaw, because the Convention was about to enter into force, or was soon likely to enter into force. And entering into force of a convention of this nature, of this magnitude, without having everybody on board was not desirable, even in the interests of those who favoured other parts of the Convention, irrespective of the deep seabed.

So this process went on, and finally, in 1994, in the summer of '94, an agreement was reached, an agreement relating to Part XI of the Convention, as it is called, which modified substantially the regime for accessing the deep seabed mineral resources. And that agreement seemed to have attracted the attention and the approval of most industrialized countries who had reservations about it.

BONE: And they signed up at that stage.

CHITTY: And they did sign up then, and since then, too.

DEEN: Mr. Chitty, before your Tribunal was set up, practically all the maritime disputes, disputes related to the continental shelf, they all went before the International Court of Justice in The Hague. What would be the position now? How are you going to convince some of the Member States that they should come to your Tribunal and not go to the ICJ?

CHITTY: Still, I don't think it's the intention or the desire to convince any State to move away from the existing mechanisms for dispute settlement, and the International Court of Justice is the organ of the United Nations for that purpose. I think the role of the Tribunal is complementary to that of the Court. The Tribunal is very specialized in Law of the Sea, and the Court has had a surfeit of cases submitted to it in the last few years, many of them related to Law of the Sea issues, and I think —

LITTLEJOHNS: You mean the World Court.

CHITTY: The World Court, yes, the International Court in The Hague. And I think that what is going to happen is there will be specialized disputes which will be submitted to the Tribunal as well, because it is an option; they're both options equally available to States parties under the Convention. This is not the case regarding seabed disputes, though, which exclusive jurisdiction rests with the Tribunal and its seabed disputes chamber.

DEEN: And can the World Court transfer some of the cases to the Tribunal?

CHITTY: There is no such mechanism. And it is not anticipated that there will be such a procedure at all. The Governments would agree on where they wish to go, and depending on the declaration they make they would submit the case to one or the other or even to arbitration, which is the procedure if they are not agreed on one of the courts.

DEEN: And your Tribunal does not have any enforcement powers, you handle the dispute and that's it?

CHITTY: Yes. The Tribunal has no enforcement powers, and that is not normally — is not something that exists in international law today. But the Tribunal's decisions are binding. And if it is submitted to the Tribunal, then they're considered binding by Governments and should be —

LITTLEJOHNS: They may be binding, Mr. Chitty, but a lot of things that are binding turn out to be not enforceable. Could a case be brought to the Security Council, for example, if your Tribunal were to issue a binding ruling in a dispute, and one of the parties refused to be bound by it, or refused to act upon it? Could it then be brought to the Security Council, for example?

CHITTY: No, there is no mechanism of that kind. But if there's a —

LITTLEJOHNS: So yours is a tribunal really without teeth.

CHITTY: But if there is a continued threat to peace, then of course that issue could be submitted to the Security Council.

BONE: What about oil? We've talked about manganese nodules. Is there any situation in which people have the technology to drill for oil beyond the 200-mile exclusive economic zone that now exists, so it would become a deep seabed issue?

CHITTY: The technology on a commercial level one doesn't hear of as yet. But I'm sure the technology does exist. It's not a field that I'm particularly knowledgeable about, but I think that it's something that exists as a capacity of many Governments, or many corporations, but one hasn't seen it coming out in —

BONE: I mean, there are only so many Law of the Sea questions that the court will have to address. I mean, obviously the question of mining of manganese nodules, it would seem that setting boundaries on this in the sea, maritime boundaries, is going to be really the main business of the Tribunal. Is that accurate to say?

CHITTY: No, I wouldn't confine it to that. Setting maritime boundaries is going to be a major issue because now there are additional areas of ocean space that have to be delimited between States, but there are many, many other issues, environmental questions, the question of fisheries, the living resources, the question of navigation, of transit through straits and navigation in international waters — there is a whole range of issues. Even questions such as

overflight would be regulated by the Convention and would be subject to the dispute settlement procedures under the Convention.

DEEN: Mr. Chitty, your Tribunal has been set up at a time when there's increasing downsizing in the UN system. Do you think you'll get enough funds to continue with this? Because Malaysia, I think in the General Assembly, specifically appealed to Member States to make sure that the dues are paid in time and in full, you know. And — what is your budget for the whole year?

CHITTY: Well, the start-up budget for the Tribunal is very limited, and it was set up as a sort of a tribunal that would meet periodically and not be in session all along until it's organized itself and is ready to receive cases. And the start-up budget for this 17-month period since October or August of 1996 and the end of '97 was some $6.2 million, and a very small staffing structure, about 20 staff in all. There was a contingency provision in case a case is submitted or an application is received. But that is certainly a very, very minimal budget for a tribunal of this size — with 21 judges, one must remember.

LITTLEJOHNS: This is **World Chronicle**. Our guest is Gritakumar Chitty, Registrar of the International Tribunal for the Law of the Sea.

Mr. Chitty, the International Court of Justice has for a long time been headquartered at The Hague, outside The Hague, actually, and now your Tribunal is headquartered in Hamburg, Germany, a neighbouring country. Why is it that both of these tribunals are in Europe? Would it not have been a better idea to have your tribunal in a third world country, for example?

CHITTY: Well, during the Law of the Sea Conference, quite early, there were — it was known that two institutions would be created. One was the Seabed Authority and the other was the Tribunal.

LITTLEJOHNS: What is the Seabed Authority?

CHITTY: The Seabed Authority is the International Seabed Authority also created by this Convention on the Law of the Sea to regulate the exploitation of manganese nodules that Mr. Bone just talked about. And that Authority would be hosted by the Jamaican Government in Jamaica, and their offer was accepted in the 1970s and finally confirmed in 1982.

LITTLEJOHNS: So the main secretariat is in Kingston, Jamaica.

CHITTY: Of the Seabed Authority. The Seabed Authority — but at the same time the Tribunal — hosting of the Tribunal was taken up much later, and there were offers from Yugoslavia, from Portugal, and from Germany and —

LITTLEJOHNS: Portugal is a big maritime country.

CHITTY: Yes. And —

LITTLEJOHNS: So why did you choose Germany, which is not such a big maritime country?

CHITTY: Well, Germany — Hamburg, as you know, is a very prominent maritime port, and it goes back to the Hanseatic League times, and they were specially interested in it, and the States parties, the Governments of Member States who were participating in the Conference, decided on a vote to accept the invitation of the German Government.

LITTLEJOHNS: And are they helping to pay for it?

CHITTY: They are paying for the totality of the building and the facilities within the host country. The building is paid by them. We are in a temporary building now, but they have planned a beautiful new structure at a cost of something like close to $100 million to host the Tribunal. The foundation stone was laid in October, and it's expected to be ready by the end of 1999.

BONE: Of course, the Law of the Sea Convention codifies all the rules in international law about the seas, and there are an awful lot of rules — how far out people can fish from their coastal State, which warship can travel which waterway, which way, all these kinds of things, and yet the Tribunal, of course, will build up a body of jurisprudence as well which will add to these rules or embellish these rules. Which areas do you think the Tribunal will develop the law most adventurously, or will embellish the most on the Convention?

CHITTY: I don't believe the Tribunal is intended to embellish it but really to —

BONE: Interpret it.

CHITTY: — interpret it; I think the word interpret is a consistent way of applying it. And I think that the area that one could expect that kind of role of the Tribunal would be primarily in areas such as the regulation of the exploitation of living resources, fisheries and areas like that, and in environment. And that is I think that the Convention has many unique provisions which are new, a regime which is very strong, and the Tribunal is an institution which should be geared to deal with that. And just recently the Tribunal has set up chambers to deal with those two issues, an environmental chamber consisting of certain judges who will be ready at a short notice to deal with a threat to the environment or an environmental case....

BONE: So say for instance a vessel from a country that has nuclear power stations decides that it's a good idea to dump nuclear waste at sea, and it just sails out into the sea and it puts it in a cask and it drops it to the bottom five miles under the ocean, which I think at some point has happened. Could an environmental group come to the court and say, well, you know, you can't do this, the seas are for all of us, you can't drop plutonium into the bottom of it?

CHITTY: The case would have to be submitted by a State party, but if it was submitted by a State party, then the Tribunal would deal with it. And it could —

DEEN: When you have a dispute between two countries, do you have to ensure that the two countries will abide by the decision of the Tribunal?

CHITTY: You would have to do that, because under the Convention the case can be submitted to the Tribunal in the case where both States have agreed to submit it to the Tribunal. If they have agreed to submit it, or if one State has agreed to submit it, the other State can accept that jurisdiction and submit it there.

BONE: So how many signatories, how many Member States are there of the Convention? How much of the world is covered by this Convention?

CHITTY: One hundred and fifteen now.

BONE: One hundred and fifteen.

CHITTY: Yes.

BONE: And how — I mean, there are 185 UN members; there are 200-odd countries in the world altogether; how many do you think you'll get to?

CHITTY: Oh, I think it's been going quite fast. In the last year we have probably about 10 or 12, and I think the adoption of the agreement regarding seabed matters has helped.

BONE: And what about countries like Bolivia or Afghanistan who don't have any sea?

CHITTY: But they have a great interest in the Law of the Sea because matters such as transit rights and access to some of the living resources are provided for under the Convention for landlocked States as well.

DEEN: The countries that are not parties to this, do they give any reasons why they don't want to be a party to it?

CHITTY: A few of them do, and mainly the problem at this point appears to be bilateral difficulties which prevent a country, one country, from accepting the Convention. There are some other countries where their own national political process is slow or the timeliness is not — it has not been timely for them to submit it. But we hope that very soon we would have them all in place, at least most of them.

BONE: One of the potential flashpoints on the Law of the Sea is between Greece and Turkey, where Greece has a lot of small islands dotted all over the Aegean within sight, really, of the Turkish coast, and if it were to enforce its 12-mile limit it would cut Turkey off from access to the high sea. Are Greece and Turkey signatories of the Convention, and is this a live issue, one that you expect might come towards the court?

CHITTY: It's a very live issue, but it's — Turkey has for that very reason refused to sign or ratify the Convention, but Greece has. So I think this is not something that is going to

be solved easily or early, and it existed when the Convention was being negotiated, and it will continue for some time to come, I think.

DEEN: How would you make the distinction between someone signing a Convention and ratifying a Convention? Is there a big difference between the two?

CHITTY: Yes. Certainly in the case of this Convention there is, because signing the Convention merely is an indication of the approval of the text of the Convention and a readiness to go through the national process of ratifying it. But the ratification is the procedure that is needed to make the party subject to the Convention.

DEEN: The parliaments have to ratify?

CHITTY: In most cases it's a parliamentary procedure; in some Governments it's an executive act.

BONE: And the Convention came into force after a certain number of States ratified.

CHITTY: Right. It was 60 were needed for ratification. But, as you know, in international law you can do both steps together, namely, you can accede to the Convention in a single step. I think the day the Convention was opened for signature Fiji acceded to it.

LITTLEJOHNS: Has the United States acceded to the Convention?

CHITTY: No, the United States has not. It has been a matter of much debate, I think, within the United States itself. And there is certainly a greater acceptance of the Convention by the United States now with this agreement regarding Part XI.

LITTLEJOHNS: Regarding what?

CHITTY: Regarding Part XI, that is the seabed mining part of the Convention.

LITTLEJOHNS: That's the most tricky part, is it?

CHITTY: It was considered problematic for the United States, among others of the industrialized world.

BONE: Originally the Convention, as I understand it, said that all those manganese nodules were going to be the common property of humankind, and that they belonged to everybody, and anybody who trawled them up should share the profits from them, and of course the Americans, since they were the ones most likely to dig them up, said, well, they should keep the profits themselves. That's basically the problem, isn't it?

CHITTY: Not quite. I think the problem is — everybody accepted that it would be the common heritage of mankind, but how to interpreted that common heritage principle was the question, whether you should have an international authority which would regulate it as a whole or which would merely license those who could and would access those minerals. Those were the main issues that arose. In the end, you have something halfway between one and the other.

BONE: And so will there be — I mean, if you're a large multinational consortium and you have some submarines and ships out there digging these things up, will you have to pay some kind of tax on what you dig up?

CHITTY: There will be an arrangement whereby some kind of payment would have to be made to the International Seabed Authority for what is collected on the basis of —

BONE: On the basis of how much you dig up or on the basis of licensing the right to exploit those minerals?

CHITTY: It's primarily based on the licensing procedure. The licensing will determine what it is, and that's the very issue that is currently under discussion at a meeting of the International Seabed Authority in Jamaica this week.

LITTLEJOHNS: Mr. Chitty, you've told us there are 21 judges. How are they chosen?

CHITTY: The judges were elected by the States parties to the Convention on nominations made earlier, and there were a substantial number of candidates beyond the 21.

LITTLEJOHNS: And are they all lawyers experienced in law of the sea?

CHITTY: Without exception they are people who have been experienced and specialized in law of the sea. And they come from various backgrounds and from all parts of the world. As you know, there's a requirement for geographic representation and also representation of the principal legal systems among the judges, and that was secured in the process of election.

LITTLEJOHNS: And they serve for three, six and nine years, I think.

CHITTY: Because this is the initial election. The intention is to create a cadence in the future so that you only have to elect seven at a time. So the first election, similar to the first election of the Court, of the International Court of Justice, gave them three, six and nine-year terms, and then at the end of three years, seven will come up for re-election.

LITTLEJOHNS: James seems to be greatly interested in manganese, but I remember that there was —

BONE: That's where the money is, Michael.

LITTLEJOHNS: I'm sorry?

BONE: That's where the money is. Follow the money. The old reporter's maxim.

LITTLEJOHNS: There's also money in fish, if you know anything about the price of fish these days. I recall that there was a so-called cod war between the United Kingdom and Iceland, which seems to have somewhat calmed down over recent years. Is that the kind of thing that would now come before your Tribunal? Because at the time I think Iceland thought of bringing it or tried to bring it to the World Court, but now it could go to your court, right?

CHITTY: Oh yes, it could. And it will be interesting to note that we have one judge from the United Kingdom and another judge from Iceland on the court, on the Tribunal.

BONE: There was a similar problem more recently between Spain particularly and the European Union on one side and Canada, where the Canadians accused the Spanish of fishing with illegal nets, nets that catch too many fish because the mesh is too small. Again, is that the kind of thing that could come to the Tribunal?

CHITTY: Yes, that also could come to the Tribunal. And there was a recent —

BONE: Do you have a Spanish judge and a Canadian judge?

CHITTY: No, we don't. But in the case where the party, the State does not have a judge on the bench, they can appoint an ad hoc judge of their nationality to supplement the bench.

BONE: Oh, that's convenient.

CHITTY: It's a practice that exists in most international tribunals, including the International Court in The Hague.

LITTLEJOHNS: You've told us you don't have any cases before the Tribunal at this time. Are you expecting any in the next few months? Are there some seething conflicts that are likely to come up?

CHITTY: No, nothing of that kind has been brought to the attention of the Tribunal as yet.

LITTLEJOHNS: So you guys are just sitting around waiting for something to happen?

CHITTY: No, there's a lot of work to be done in preparing the rules and preparing the Tribunal to deal with it. They've just gone through part of the rules and they expect the rest to be completed very shortly.

LITTLEJOHNS: Mr. Chitty, that's all the time we have. Thank you for being with us on this edition of **World Chronicle** and talking about a subject which I guess not too many people know about.

Our guest has been Gritakumar Chitty, Registrar of the International Tribunal for the Law of the Sea. He was interviewed by James Bone of *The Times* of London and Thalif Deen of Inter Press Service.

I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of **World Chronicle**.

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